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SUBJECT: AMBASSADOR MICHALAK'S MEETING WITH HCMC BAR ASSOCIATION

REF: A) HANOI 1993 B) HCMC 906

HO CHI MIN 00000009 001.2 OF 002

Summary

1. (SBU) At Ambassador Michalak's December 3 meeting with key members of the HCMC Bar Association, member lawyers gave a frank assessment of Vietnam's current legal system and advocated for further reform. The lawyers were hopeful that the establishment of regional courts will increase transparency, but also want to see a constitutional court created to allow them to contest national security laws like Article 88, often used to prosecute dissidents. All agreed raising public awareness of basic human rights and rule of law issues will be key in building consensus for reform. While the three defense lawyers who participated in the recent appeals trial of human rights lawyers Le Thi Cong Nhan and Nguyen Van Dai were disappointed they could not get their convictions overturned, they said the openness of the proceedings and the access to their clients was unprecedented. End summary.

HCMC Bar All-Stars

2. (SBU) The HCMC Bar Association lawyers represented a wide range of backgrounds and experiences. In addition to representing political dissidents, all of them also represent corporate clients and government clients. Their profiles in brief are:

-- Nguyen Dang Trung, President, Cadre Secretary and National Assembly member. A decorated wartime activist for the Communist Party, Trung defended AmCit Nguyen Cac Foshee in 2006 and other alleged "anti-revolutionaries" previously.

-- Bui Quang Nghiem, Vice President and Party Secretary. Nghiem was a member of the now-disbanded Hanoi-based Lawyers for Justice Group and co-counsel for the November 27 Supreme People's Court appeals trial of Le Thi Cong Nhan and Nguyen Van Dai. He and Mr. Dzung have also represented People's Democratic Party (PDP) dissidents in Ho Chi Minh City.

-- Le Cong Dinh, Vice President. A U.S.-educated lawyer, Dinh was co-counsel for Le Thi Cong Nhan and Nguyen Van Dai. Dinh is also a prominent corporate lawyer whose former clientele includes Exxon Mobil, Aventis, and Boeing. Dinh's recent article challenging the Prime Minister to allow private media outlets in Vietnam appeared on BBC's Vietnamese service on the Internet.

--Mr. Dang Dzung, co-counsel for Nhan and Dai as well as PDP activist Attorney Le Nguyen Sang. Dzung was also slated to represent detained American and Viet Tan activist Do Thanh Cong

in August 2006 before he was released. Dzung, a former Tuoi Tre (Youth Newspaper) journalist, has published over 20 articles for the BBC's Vietnamese news service on democracy and other political issues.

--Madame Truong Thi Hoa, one of the most senior lawyers in HCMC, Hoa has been practicing since 1971 (when she a member of the Republic of South Vietnam's bar association) and was a legal consultant to former prime minister Vo Van Kiet. Hoa is now a leading legal consultant for government and business organizations, as well as a staunch defender of women and children's rights.

Raising the Legal Bar

13. (SBU) When asked about fairness and impartiality in the Vietnamese legal system, Madame Hoa said while she has represented the GVN and large corporations in cases where they lost to "ordinary citizens," government agencies and big companies have an overwhelming advantage because they are well-versed on legal procedures and can afford to hire good lawyers. Hoa believes the scale of social injustice is gradually becoming more balanced as Vietnam becomes more prosperous and that the common citizen's ability to flex their legal muscles will grow as they become more economically empowered.

14. (SBU) Nghiem believes the Central Government's intentions and policies are good, but implementation falters when local officials are ignorant of the law or use the law to protect their own interests. Nghiem said provincial officials continue to view the law as a tool to "impose the will of the rulers" while at the central level, officials view the law as a "tool for development." As an example of flagrant abuse of power, he cited instances in which provincial leaders sign decrees that directly contradict national laws, such as an order requiring farmers to sell their rice crop to the provincial rice company. All lawyers agreed that while such decrees remain regrettably common, the courts have been unwilling to address the

HO CHI MIN 00000009 002.2 OF 002

constitutionality or legality of such acts.

15. (SBU) Dinh said without a mechanism for questioning the constitutionality of the law, there is currently no way for lawyers to address contradictions or inconsistencies between the GVN's policies and Vietnam's Constitution--which actually upholds citizens' basic rights, at least on paper. While WTO accession has forced Vietnam to review and repeal any domestic laws that conflict with Vietnam's international trade commitments, progress has not yet spilled over into the area of international human rights standards. Dinh believes the establishment of a Constitutional Court will be critical in their fight to repeal Article 88 and other laws used to limit free speech and other basic rights.

Hope for the Future

16. (SBU) President Trung said the establishment of regional courts in the near future will make the court system more responsive and transparent. Like the US system of district courts, regional courts will introduce another layer of oversight as well as another venue for appeal. Trung also expects two bills--one for administrative procedures and one for complaint resolution--to open for debate in the next National Assembly session.

17. (SBU) All the lawyers agreed that Vietnam's legal reform efforts hinge on raising citizens' awareness of their basic constitutional rights and suggested several specific steps to advance progress. Dzung believes the USG can play a constructive role by facilitating dialogue between lawyers and judges and getting more American legal guides translated and published in Vietnam. Dzung also thinks introducing prepaid legal services targeted at Vietnam's rising middle class will enhance public awareness and fill a growing public need.

Ambassador Michalak noted that the American Bar Association now has a representative in Hanoi which could help the HCMC Bar Association further its goals.

Defense Lawyers 60 Percent Satisfied

18. (SBU) Lawyers Dinh, Dzung and Nghiem, the defense team for jailed human rights lawyers Nguyen Van Dai and Le Thi Cong Nhan, said the November 27 Supreme People's Court appeal trial was more open and well-organized than the trial of first instance (Ref A). Although the team considered the outcome to be a "failure" because the judge did not overturn the convictions for Nhan and Dai, the three lawyers said they were "60 percent satisfied" with the reduction in sentences and the overall trial proceedings. The three confirmed they had no difficulties meeting with their clients in prison and were generally able to present their arguments in court, though they were often stopped by the judge from "going too far." Dzung expressed great frustration over being interrupted six times, especially when he started to touch on the constitutionality of Article 88. (Note: Article 88, which outlaws propaganda against the Government of Vietnam, has been used many times to prosecute human rights activists and dissidents. End note.) The team said they planned to send a formal complaint to the Ministry of Justice and the Supreme People's Court regarding the interruptions during the proceeding.

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